

SUBCHAPTER B—GRANTS AND OTHER FEDERAL ASSISTANCE

PART 33—PARTICIPATION BY DIS-ADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

Subpart A—General Provisions

Sec.

- 33.101 What are the objectives of this part?
- 33.102 When do the requirements of this part apply?
- 33.103 What do the terms in this part mean?
- 33.104 May a recipient apply for a waiver from the requirements of this part?
- 33.105 What are the compliance and enforcement provisions of this part?
- 33.106 What assurances must EPA financial assistance recipients obtain from their contractors?
- 33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

Subpart B—Certification

- 33.201 What does this subpart require?
- 33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?
- 33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?
- 33.204 Where does an entity become certified under EPA's 8% and 10% statutes?
- 33.205 How does an entity become certified by EPA?
- 33.206 Is there a list of certified MBEs and WBEs?
- 33.207 Can an entity reapply to EPA for MBE or WBE certification?
- 33.208 How long does an MBE or WBE certification from EPA last?
- 33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?
- 33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?
- 33.211 What is the process for appealing or challenging an EPA MBE or WBE certification determination?
- 33.212 What conduct is prohibited by this subpart?

Subpart C—Good Faith Efforts

- 33.301 What does this subpart require?
- 33.302 Are there any additional contract administration requirements?
- 33.303 Are there special rules for loans under EPA financial assistance agreements?

- 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

Subpart D—Fair Share Objectives

- 33.401 What does this subpart require?
- 33.402 Are there special rules for loans under EPA financial assistance agreements?
- 33.403 What is a fair share objective?
- 33.404 When must a recipient negotiate fair share objectives with EPA?
- 33.405 How does a recipient determine its fair share objectives?
- 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?
- 33.407 How long do MBE and WBE fair share objectives remain in effect?
- 33.408 May a recipient use race and/or gender conscious measures as part of this program?
- 33.409 May a recipient use quotas as part of this program?
- 33.410 Can a recipient be penalized for failing to meet its fair share objectives?
- 33.411 Who may be exempted from this subpart?
- 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

Subpart E—Recordkeeping and Reporting

- 33.501 What are the recordkeeping requirements of this part?
- 33.502 What are the reporting requirements of this part?
- 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

APPENDIX A TO PART 33—TERMS AND CONDITIONS

AUTHORITY: 15 U.S.C. 637 note; 42 U.S.C. 4370d, 7601 note, 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198, 2 CFR part 200.

SOURCE: 73 FR 15913, Mar. 26, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 33.101 What are the objectives of this part?

The objectives of this part are:

(a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements. To that end, implementation of this rule with respect to grantees, sub-grantees, loan recipients, prime contractors, or sub-contractors in particular States or locales—notably those where there is no apparent history of relevant discrimination—must comply with equal protection standards at that level, apart from the EPA DBE Rule's constitutional compliance as a national matter;

(b) To harmonize EPA's DBE Program objectives with the U.S. Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995);

(c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and

(d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

§ 33.103 What do the terms in this part mean?

Terms not defined below shall have the meaning given to them in 2 CFR part 200 and 1500, and 40 CFR part 35 as applicable. As used in this part:

Availability analysis means documentation of the availability of MBEs and WBEs in the relevant geographic market in relation to the total number of firms available in that area.

Award official means the EPA Regional or Headquarters official delegated the authority to execute financial assistance agreements on behalf of EPA.

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.

Construction means erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.

Disabled American means, with respect to an individual, permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

Disadvantaged business enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Disparity study means a comparison within the preceding ten years of the available MBEs and WBEs in a relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

Equipment means items procured under a financial assistance agreement as defined by 2 CFR 200.33.

Fair share objective means an objective expressing the percentage of MBE or WBE utilization expected absent the effects of discrimination.